

**The Internal Revenue Service Should Improve
Its Federal Tax Lien Procedures**

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DEPARTMENT OF THE TREASURY
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INSPECTOR GENERAL
for TAX
ADMINISTRATION

September 28, 1999

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in black ink that reads "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Internal Revenue Service Should
Improve Its Federal Tax Lien Procedures

This report presents the results of our review of the Internal Revenue Service (IRS) Fiscal Year (FY) 1999 compliance with new federal tax lien (FTL) requirements, 26 U.S.C. § 6320 (1986), set forth in the IRS Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) [RRA 98].

In summary, during the initial implementation period, the IRS was not consistently implementing federal tax lien (FTL) provisions of the RRA 98. As a result, the IRS was not always informing taxpayers and their representatives of the taxpayers' right to a hearing once an FTL is filed.

Since the IRS was not consistently implementing RRA 98 FTL provisions, we recommended that the IRS improve FTL procedures, make system changes, and revise existing management information systems to ensure that RRA 98 FTL requirements are met, and associated IRS procedures are followed.

The Assistant Commissioner (Collection) and the Assistant Commissioner (Customer Service) concurred with the findings and recommendations in the report and agreed to take corrective action. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are also being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions,

or your staff may call Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Improve Its Federal Tax Lien Procedures**

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Executive Summary

A federal tax lien (FTL) protects the government's interest by attaching a claim to the taxpayer's assets for the amount of unpaid tax liabilities. The Internal Revenue Service (IRS) Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) [RRA 98], and Internal Revenue Code 26 U.S.C. § 6320 (1986) require the IRS to notify taxpayers that a FTL has been filed. Additionally, taxpayers may request a hearing with the IRS if they believe that the FTL is not appropriate. These new requirements became effective on January 18, 1999.

The Treasury Inspector General for Tax Administration is required by 26 U.S.C. § 7803(d)(1)(A)(iii) (1986) to determine annually if the IRS is complying with the new FTL requirements. The overall objective of this audit was to evaluate the IRS' Fiscal Year 1999 compliance with the new FTL requirements, 26 U.S.C. § 6320 (1986), set forth in the RRA 98.

Results

Generally, taxpayers were sent the RRA 98 lien notice. However, during the initial implementation period, the IRS was not consistently implementing RRA 98 FTL provisions and the associated IRS procedures. As a result, the IRS was not always informing taxpayers and their representatives of the taxpayers' right to a hearing once a FTL is filed. Also, existing IRS management information systems do not measure compliance with the new RRA 98 FTL notification requirements.

The IRS Needs to Improve Procedures for Ensuring Taxpayer Rights are Protected

The IRS must be more diligent in notifying taxpayer representatives, spouses, and business partners of lien filings; mailing all notices timely; processing returned notices correctly; and properly documenting actions taken in each case.

We reviewed 473 cases, of which 157 cases (33 percent) involved 176 potential violations of taxpayer rights. The majority of the potential taxpayer rights violations were in the following two areas:

- For 78 potential taxpayer rights violations, the taxpayer representative (e.g., accountant, attorney, etc.) was not sent a RRA 98 lien notice. Generally, taxpayers were receiving the RRA 98 lien notice even if the taxpayer representative was not. IRS procedures require that taxpayer representatives be

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sent a copy of the RRA 98 lien notice when a FTL is filed against a taxpayer they represent.

- For 62 potential taxpayer rights violations, the RRA 98 lien notices were not mailed to taxpayers within 5 business days of the FTL filing, as required by 26 U.S.C. § 6320(a)(2) (1986). No RRA 98 lien notice was late by more than seven days. IRS management revised the guidelines regarding how to measure timeliness after our case review period. The new guidelines to measure timeliness may not protect the government's interest.

Also, documentation of late requests for FTL hearings was not being maintained and undeliverable RRA 98 lien notice procedures were inefficient and incomplete.

In addition, existing IRS management information systems do not measure compliance with the new RRA 98 FTL notification requirements. Without a compliance measurement process, the IRS will not be able to ensure taxpayer rights are not violated when a FTL is filed and may continue to implement the new RRA 98 provisions and associated IRS procedures inconsistently.

Summary of Recommendations

This report includes two recommendations. First, IRS systems should be changed to automate the reissuance of undeliverable RRA 98 lien notices and the sending of RRA 98 lien notices to all responsible taxpayers. Second, procedures should be revised to ensure that the government's interest is protected, returned mail is completely researched and processed efficiently, adequate documentation is kept, and existing IRS management information systems measure compliance with the new RRA 98 FTL notification requirements.

Management's Response: The Assistant Commissioner (Collection) and the Assistant Commissioner (Customer Service) agreed with our recommendations and have agreed to take corrective actions. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as Appendix VI.

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Objective and Scope

The overall objective of this audit was to evaluate the IRS' FY 1999 compliance with new FTL requirements set forth in the RRA 98.

The overall objective of this audit was to evaluate the Internal Revenue Service's (IRS) Fiscal Year (FY) 1999 compliance with new federal tax lien (FTL) requirements, 26 U.S.C. § 6320 (1986), set forth in the Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) [RRA 98]. The Treasury Inspector General for Tax Administration is required by 26 U.S.C. § 7803(d)(1)(A)(iii) (1986) to determine annually if the IRS is complying with the new FTL requirements.

We interviewed key IRS personnel and obtained and reviewed documentation (IRS lien system documentation, post office mailing documentation, etc.) at the following sites:

- Austin Service Center in Austin, Texas.
- Central California District in San Jose, California.
- Georgia District and the Atlanta Customer Service Center in Atlanta, Georgia.
- Houston District in Houston, Texas.
- Kentucky-Tennessee District in Nashville, Tennessee.
- Midwest District in Milwaukee, Wisconsin.
- Pacific-Northwest District in Seattle, Washington.
- Pennsylvania District in Philadelphia and Pittsburgh, Pennsylvania.
- Philadelphia Service Center in Philadelphia, Pennsylvania.
- South Texas District in Austin, Texas.

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- Southern California District in Laguna Niguel, California.
- Upstate New York District in Buffalo, New York.

One of the new RRA 98 FTL requirements, 26 U.S.C. § 6320 (a)(3)(B) (1986), concerns the right of taxpayers to request a hearing when a FTL is filed. The IRS developed and distributed procedures to the appropriate offices to ensure taxpayers are provided with their appeal rights.

Since this provision went into effect in January 1999, not enough time had passed for a FTL hearing case to be closed. Therefore, we were not able to review any closed FTL hearing cases and cannot express an opinion on the IRS controls surrounding FTL hearing cases. We plan to conduct a separate review in this area.

Another RRA 98 FTL requirement that went into effect in January 1999 concerns notifying taxpayers that a FTL has been filed. We reviewed 473 FTL cases (cases where the IRS filed a FTL during the first 6 weeks of implementation) from 8 IRS locations to determine how well the IRS was implementing the new RRA 98 FTL notification requirements and the associated IRS procedures. The sampling of cases was not statistically valid; therefore, the results may or may not be representative of cases nationwide.

We conducted the review between February and June 1999 in accordance with *Government Auditing Standards*. Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

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Background

A FTL protects the government's interest by attaching a claim to the taxpayer's assets for the amount of unpaid tax liabilities. When taxpayers fail to pay tax liabilities, designated IRS employees are authorized to file FTLs to protect the government's interest. During FY 1998, the IRS filed over 380,000 FTLs. During the first 6 months of FY 1999, FTL filings had dropped approximately 45 percent from the first 6 months of FY 1998.

The RRA 98 changed the procedures relating to the filing of FTLs. The intent of these requirements was to ensure that taxpayers were aware of their rights when the IRS files a FTL. The following requirements are effective for FTLs filed after January 18, 1999:

The RRA 98 requires that the IRS notify the taxpayer that a FTL is being filed.

- **Requirement to Timely Notify a Taxpayer of a FTL Filing** - The IRS is required by 26 U.S.C. § 6320(a) (1986) to notify the taxpayer, in writing, when a FTL is filed. The RRA 98 lien notice must be delivered in person, left at the taxpayer's residence or place of business, or sent by certified mail (the mail must be accepted in person, at a residence or at the post office) within five business days after a FTL has been filed. The RRA 98 lien notice must include an explanation of the taxpayer's right to request a hearing within 30 calendar days following the 5 business days.
- **Right to a FTL Hearing** - The 26 U.S.C. § 6320(a)(3)(B) (1986) specifies that taxpayers are entitled to one hearing per tax liability period for which a FTL has been filed. The 26 U.S.C. § 6320(b)(3) (1986) requires an IRS official, with no prior involvement with the taxpayer, to conduct

The RRA 98 allows taxpayers the right to a hearing concerning the appropriateness of a FTL filing.

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the hearing in accordance with IRS procedures.

If the IRS does not follow these requirements, taxpayers may not be aware of or given their rights when a FTL is filed. The full text of the RRA 98 FTL provisions is included as Appendix V.

The IRS created operational procedures in response to the new RRA 98 FTL requirements.

In response to the RRA 98, the IRS created operational procedures to fulfill the congressional intent of the RRA 98.

- **Power Of Attorney Notification** - A taxpayer's representative (accountant, attorney, etc.) is required to be notified when a FTL is filed against a taxpayer that he/she is representing.
- **Undeliverable Mail Procedures** - The IRS is required to send the RRA 98 lien notice to a new address if the initial mailing is returned because it could not be delivered and a different address is available. The IRS is also required to re-calculate the taxpayer's deadline for requesting a hearing concerning the appropriateness of the FTL filing.
- **Certified Mail** - For RRA 98 lien notices sent by mail, the IRS is required to use "certified" mail, i.e., the mail must be accepted in person at a residence or at the post office.
- **Spouse and Business Partner Notification** - If a tax return involves more than one individual, e.g., a married couple or several business partners, the IRS is required, per Internal Revenue Manual (IRM) 5.12.3.1.4, to send the RRA 98 lien notice to both spouses and all appropriate business partners when a FTL is filed.

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Results

The RRA 98 lien notice was generally being sent to taxpayers. However, the IRS needs to improve FTL procedures. Also, the IRS does not have a process in place to ensure that these situations are identified and corrected.

Generally, taxpayers were sent the RRA 98 lien notice. However, during the initial implementation period, the IRS was not consistently implementing FTL provisions of the RRA 98 and the associated IRS procedures. As a result, the IRS was not always informing taxpayers and their representatives of the taxpayer's right to a hearing once a FTL is filed. Also, the IRS does not have a process in place to ensure that these situations are identified and corrected.

The Internal Revenue Service Needs to Improve Procedures for Ensuring Taxpayer Rights are Protected

The IRS developed and distributed procedures for notifying taxpayers of FTL filings; however, the IRS needs to improve or clarify those procedures. The need for improved procedures, along with employees not following current procedures, has led to the IRS inconsistently implementing the RRA 98 FTL provisions and the associated IRS procedures. Specifically, the IRS must be more diligent in notifying taxpayer representatives, spouses, and business partners of lien filings; mailing all notices timely; processing returned notices correctly; and properly documenting actions taken in each case.

We selected 473 FTL cases to determine how well the IRS was implementing the new FTL requirements.

We selected 473 FTL cases (cases where the IRS filed a FTL during the first 6 weeks of implementation) in 8 locations around the country to determine how well the IRS was implementing the new RRA 98 FTL requirements and the associated IRS procedures. The sampling of cases was not statistically valid; therefore, the results may or may not be representative of cases nationwide.

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We evaluated the FTL cases using five requirements.¹ IRS system records and case documents were used to verify four of the requirements. For the Power Of Attorney Notification requirement, we considered taxpayer rights were potentially violated if 1) IRS case files did not include documentation to verify that the requirement was met, and 2) IRS officials agreed that the requirement had not been met.

Potential taxpayer rights violations were present in 157 of the cases reviewed.

For the 473 cases, 157 cases (33 percent) involved 176 potential violations of taxpayer rights.

Requirement¹	Number of Potential Taxpayer Right Violations
Power Of Attorney Notification	78
Requirement to Timely Notify a Taxpayer of a FTL Filing	62
Undeliverable Mail Procedures	5
Certified Mail	23
Spouse and Business Partner Notification	8
Total	176

Based on interviews with key IRS employees and the review of FTL cases, FTL procedures need to be improved in the following areas:

¹ See **Background** section (pages 3 and 4) for an explanation of each requirement.

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Based on interviews with key IRS employees and the review of FTL cases, FTL procedures need to be improved in several areas.

- Notifying a taxpayer's representative that an FTL has been filed.
- Ensuring that the RRA 98 lien notice is timely mailed to taxpayers.
- Determining how to proceed when a RRA 98 lien notice is returned to the IRS because it could not be delivered to the taxpayer.
- Keeping documentation in IRS case files.
- Ensuring that all responsible spouses and business partners are provided the RRA 98 lien notice.
- Ensuring that existing IRS management information systems measure IRS compliance with the new RRA 98 FTL notification requirements.

Notifying a taxpayer's representative that an FTL has been filed

If a taxpayer or his/her representative is not sent the RRA 98 lien notice or the notice is not sent timely, the taxpayer representative may not meet the deadline for requesting a hearing for the taxpayer concerning the appropriateness of the FTL filing.

Potential taxpayer rights violations were present in 78 cases due to taxpayer representatives not being sent the required RRA 98 lien notice for taxpayers they represent.

IRS procedures require that taxpayer representatives be sent a copy of the RRA 98 lien notice (Letter 3172) when a FTL is filed against a taxpayer they represent. For the 473 cases we reviewed, 112 cases involved a taxpayer with an authorized taxpayer representative. In 78 of the 112 cases (70 percent), the taxpayer representative was not sent a copy of the RRA 98 lien notice. Generally, taxpayers were sent the RRA 98 lien notice even if the notice was not sent to the taxpayer representative. This issue was found in all eight locations we visited.

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Taxpayer representatives were not being informed of FTL filings because the mailing of the RRA 98 lien notice to a taxpayer representative was a manual process and procedures were not complete. For example:

- IRS procedures contained no instructions on how to send a copy of the RRA 98 lien notice to the taxpayer representative or the time period for completing this action.
- The IRS handbook for Automated Collection System (ACS) employees, who file FTLs, did not provide specific instructions on sending a copy of the RRA 98 lien notice to a taxpayer's representative.

Ensuring that the RRA 98 lien notice is timely mailed to taxpayers

If the RRA 98 lien notice is not sent to the taxpayer within 5 business days, the taxpayer will not receive the entire 30 calendar days allowed by RRA 98 to request a hearing concerning the appropriateness of the FTL filing.

Potential taxpayer rights violations were present in 62 cases due to RRA 98 lien notices not being sent to the taxpayer within 5 business days, as required.

For 23 of the 473 cases reviewed, adequate documentation was not available to determine whether the RRA 98 lien notice was issued timely (See Page 12, **Keeping documentation in IRS case files**). For 62 of the remaining 450 cases (14 percent), the RRA 98 lien notices were not sent to the taxpayer within 5 business days after a FTL was filed. All untimely RRA 98 lien notices were issued within seven days after the five business days had expired. This issue was found in five of the eight locations we visited. In two locations, the IRS employees were not printing and mailing the RRA 98 lien notice on a daily basis, as required by IRS procedures.

The timeliness criteria was changed after our case review period: During the time of our case review

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New IRS procedures may not protect the government's interest.

(January 19 through February 28, 1999), the guideline for timely notifying taxpayers of their rights upon the filing of a FTL was five business days from the date that the FTL was entered on the IRS' lien system.

On March 15, 1999, the IRS revised the guidelines for timely notifying the taxpayer of their rights when a FTL is filed. The new guidelines changed the method for counting the five business days. The five-business-day period now begins the day the Notice of Federal Tax Lien (NFTL) (Form 668Y)² is printed. However, under the revised procedures:

- No guidelines exist for when the NFTL should be printed once input on the IRS' lien system. If the NFTL is not printed timely, the government's interest could be endangered.
- If the NFTL is printed and mailed on different days, the FTL filing date on the new RRA 98 notice will be incorrect. The IRS considers the mailing date as the lien filing date; however, the lien filing date will be listed on the RRA 98 lien notice as the print date of the NFTL. The NFTL print date will also be used to calculate the deadline for requesting a hearing on the appropriateness of a FTL filing. By not printing and mailing NFTLs on the same day, the IRS is reducing the normal amount of time that the taxpayer has to request a hearing.

² The NFTL (Form 668Y) is the federal tax lien that is filed at the appropriate courthouse.

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Determining how to proceed when a RRA 98 lien notice is returned to the IRS because it could not be delivered to the taxpayer

IRS procedures require IRS employees who work with returned mail to perform research to determine if a different address is available when a RRA 98 lien notice is returned because it could not be delivered to the taxpayer. If a different address is found, the IRS should 1) calculate a new deadline for the taxpayer to request a hearing concerning the appropriateness of the FTL filing, 2) send a new RRA 98 lien notice to the taxpayer, and 3) make an entry on the IRS' lien system that contains the revised deadline for requesting a hearing. If a different address is not found, IRS employees who work with returned mail should forward the returned mail to the employee who initiated the FTL filing for inclusion in the IRS case file.

If the IRS does not try to find a different address when a RRA 98 lien notice is returned, the taxpayer may not be informed that a FTL has been filed and of his/her right to request a hearing concerning the appropriateness of the FTL filing. If the IRS does not re-calculate the deadline for a taxpayer to request a hearing when sending a RRA 98 lien notice to another address, the IRS is denying the taxpayer his/her right to the full amount of time allowed to request a hearing. This may result in a hearing being denied because it was not requested timely.

Potential taxpayer rights violations were present in 5 cases due to 1) the taxpayer not being given a full 30 calendar days to request a hearing, or 2) the IRS not mailing a RRA 98 lien notice to another available address.

Of the 473 cases reviewed, 36 were documented as returned to the IRS because they could not be delivered to the taxpayer. An additional three RRA 98 lien notices were not documented as returned to the IRS; however, IRS officials agreed that the notices were not sent to the correct address. The IRS correctly worked 16 of the 39 cases. For the remaining 23:

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- Two RRA 98 lien notices were sent to a new address; however, the IRS did not correctly re-calculate the deadline for the taxpayer to request a hearing. One case was re-calculated in the taxpayer's favor and is not a potential taxpayer rights violation. The new 30-calendar-day period for requesting a hearing had to be re-calculated manually and there were no procedures or examples explaining how to re-calculate the new deadline. This issue was found in two of the eight locations we visited.
- One RRA 98 lien notice was not mailed to a new address even though there was a different address on the IRS' system. We informed management of this issue and a new RRA 98 lien notice was sent to the address available on the IRS system.
- Three RRA 98 lien notices were initially mailed to an address that the IRS knew to be incorrect. While no documentation was found that these notices were returned to the IRS, IRS management agreed that these notices could not have been delivered to the correct taxpayer. IRS management agreed to send the new RRA 98 lien notices to a more current address. We did not determine if the 30-calendar-day deadline for requesting a lien hearing was correctly re-calculated.

IRS employees are not required to research case files for a different address when RRA 98 lien notices are returned. If IRS employees had researched case files on these three cases, they would have been able to provide a different address to which to send the new RRA 98 lien notices.

- Seventeen cases were not processed using correct procedures.

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- IRS employees at one location stated that five RRA 98 lien notices were sent to a new address; however, no documentation (Postal Forms 3877) was being kept to verify that the RRA 98 lien notices were re-sent to the taxpayer.
- For 12 cases, a different address was not available on the IRS' system. The returned mail package was not forwarded to the responsible employee to include in the case file. This issue was found in three of the eight locations we visited.

Keeping documentation in IRS case files

Postal Forms 3877

Without a verified, certified mail list of the mail received by the post office (Postal Form 3877), the IRS has no proof that the RRA 98 lien notices were mailed. Also, the IRS cannot determine whether the RRA 98 lien notices are being sent within five business days, as required by the RRA 98.

On December 23, 1998, the Director, Office of Special Procedures, issued a memorandum with general instructions for IRS offices to retain Postal Form 3877. However, the instructions were not incorporated in the IRM.

The certified mail list identifies RRA 98 lien notices that were sent to the post office for certified mailing. The list is stamped by the post office with the date that the notices were received. For 23 of the 473 cases (5 percent) selected for review, sufficient documentation to prove that RRA 98 lien notices were sent to taxpayers, or were sent timely, had not been retained.

- In eight cases, the IRS did not have a copy of the Postal Form 3877 used to verify that mail was received by the post office.

Potential taxpayer rights violations for 23 cases could not be determined due to a lack of documentation that the RRA 98 lien notices were sent to taxpayers or were sent timely.

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- In 15 cases, the IRS had a copy of the Postal Form 3877 used to verify that mail was received by the post office; however, the copy did not include markings to verify that the post office had received the mail or the markings were illegible.

These issues were found in three of the eight locations we visited.

Management's Actions: We discussed with IRS personnel the fact that the IRS had no IRM procedures for retaining the Postal Form 3877. On March 8, 1999, the National Director, Collection Field Operations, issued a memorandum with detailed instructions on how IRS offices should retain Postal Form 3877. Collection Field Operations' managers told us that these new procedures were inadvertently omitted from the latest IRM update, but will be included in a subsequent revision. We believe this action is appropriate and we make no further recommendation.

Postal Envelopes

The IRS also did not have procedures for retaining envelopes for requests for hearings (Forms 12153) that are received after the 30-calendar-day period for requesting a hearing has expired. Without these envelopes, the IRS cannot prove that a taxpayer did not request a hearing during the required time period, in the event this is questioned.

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Ensuring that all responsible spouses and business partners are provided the RRA 98 lien notice

If responsible spouses or business partners are not each sent the RRA 98 lien notice, they will not be informed that a lien has been filed and of their right to a hearing.

Potential taxpayer rights violations were present in eight cases because RRA 98 lien notices were not sent to all appropriate spouses and business partners.

Normally, spouses are equally responsible for tax liabilities on tax returns that they sign together. For the 473 cases we reviewed, 166 cases involved a FTL that was filed against 2 individuals (spouses). For 7 of the 166 cases (4 percent), a spouse was not sent a copy of the RRA 98 lien notice. This issue was found in five of the eight locations we visited.

Individual partners in a partnership may be responsible for tax liabilities incurred through the operation of the partnership. Of the 473 cases reviewed, 1 case involved a partner who was not sent a copy of the RRA 98 lien notice.

The IRS' lien system is not programmed to send the RRA 98 lien notice to individual partners in a partnership or spouses living at different addresses in certain situations.

Ensuring that existing IRS management information systems measure IRS compliance with the new RRA 98 FTL notification requirements

The IRS had not ensured that existing management information systems measure compliance with RRA 98 lien notification requirements, and that associated IRS procedures were followed.

We interviewed key IRS officials and reviewed an IRS complaint tracking system (Problem Resolution Office Management Information System), and found no RRA 98 complaints concerning FTL processing. However, our review of FTL cases showed that RRA 98 requirements were not being met and associated IRS procedures were not being followed.

Although no complaints had been received, the IRS' existing management information systems do not measure compliance with the new RRA 98 FTL

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notification requirements. Without a system to measure compliance, the IRS may not be able to ensure taxpayer rights are protected when a FTL is filed and may continue to implement the new RRA 98 provisions and associated IRS procedures inconsistently.

Recommendations

1. Change the IRS systems to automatically:
 - a. Reissue the RRA 98 lien notices to the taxpayer when the original notice cannot be delivered to the taxpayer's address of record. The notice should contain a different taxpayer address and a re-calculated time period for requesting a hearing.
 - b. Send the RRA 98 lien notice to all responsible spouses and all appropriate business partners.
2. Revise procedures to ensure that:
 - a. The RRA 98 lien notice is sent to a taxpayer's representative.
 - b. Returned RRA 98 lien notices are electronically documented on the lien system instead of being forwarded to employees who do not maintain paper case files.
 - c. Envelopes for requests for hearings (Forms 12153) are retained if they are received after the 30-calendar-day period for requesting a hearing has lapsed.
 - d. The NFTL (Form 668Y) is printed shortly after being input on the IRS' lien system and mailed the same day.

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- e. Case files are researched for a different address when a RRA 98 lien notice is returned to the IRS because it could not be delivered to the taxpayer.
- f. Existing management information systems measure compliance with the new RRA 98 FTL notification requirements.

Management's Response: Collection and Customer Service management agreed to initiate several corrective actions.

Collection and Customer Service management initiated several corrective actions to address the recommendations

- Enhancements will be made to the ALS system.
- Collection and Customer Service management issued instructions to employees and will update several sections of the IRM.
- Program reviews are being conducted to measure compliance of RRA 98 NFTL notification requirements.

(See Appendix VI for more details.)

Conclusion

While the IRS has made progress in developing procedures to address the new FTL requirements contained in RRA 98, the IRS needs to improve and clarify these procedures and ensure consistency in their implementation. To support this goal, existing management information systems should be revised to measure and track the IRS' progress in ensuring that taxpayers' rights are not violated when FTLs are filed.

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective was to evaluate the Internal Revenue Service's (IRS) compliance with new federal tax lien (FTL) requirements set forth in the IRS Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) [RRA 98]. The Treasury Inspector General for Tax Administration is to determine annually if the IRS is complying with new FTL requirements. To accomplish this, we:

- I. Evaluated the IRS' compliance with the requirement to notify taxpayers in writing of the filing of a tax lien.
 - A. Identified through discussions with National Office Collection and Appeals Division employees current FTL procedures (regulations, user manuals, National Office memoranda, local procedures, etc.), including procedures which address RRA 98 changes.
 1. Determined if FTL notification procedures have been changed to reflect the requirements of 26 U.S.C. § 6320 (1986) – Notice and Opportunity for Hearing Upon Filing of Notice of Lien.
 2. Determined if 26 U.S.C. § 6320 (1986) procedural changes have been properly communicated to all affected IRS functions (Collection, Appeals) and locations (districts, service centers, customer service sites).
 3. Determined if the RRA 98 lien notice contained information required by 26 U.S.C. § 6320 (1986) (the amount of unpaid tax, the right of the taxpayer to request a hearing within 30 calendar days after the 5-business-day notification period, and the procedures relating to FTL releases).
 4. Determined if procedures have been developed and are adequate for processing RRA 98 lien notices that are returned to the IRS because they cannot be delivered to the taxpayer.
 - B. Reviewed FTL procedures with IRS personnel (Integrated Collection System and Automated Liens System coordinators, group managers, Special Procedures function, etc.) in the 12 offices (3 per region) judgmentally selected for review. Identified related procedural and system changes made to comply with the requirements of the RRA 98.
 1. Documented each office's process for filing FTLs and notifying taxpayers of FTL filings and their right to a hearing (including procedures for resolving cases where the RRA 98 lien notice was returned to the IRS because it could not be delivered to the taxpayer).

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2. Evaluated the processes identified in step 1 above to determine if they meet the requirements of 26 U.S.C. § 6320 (1986).
3. Determined whether each office received any procedural changes (particularly memoranda, regulation updates) from the National Office. Compared local documentation of procedures to copies of documents obtained in Objective I.A. Noted any differences and followed up, when appropriate.
- C. Determined what systems were in place to assist IRS management in measuring compliance with laws and procedures regarding notifying taxpayers of FTL filings and their right to a hearing.
- D. Determined if taxpayers were properly notified when liens were filed.
 1. Obtained electronic data from the IRS' Automated Liens System for all FTLs filed for the locations selected from January 19 through February 28, 1999.
 2. Selected 473 FTL cases from 8 locations around the country. We used a random number generator to select the cases and replaced or discarded cases where the FTL was cancelled or the filing was for a FTL that had been previously filed.
 3. Reviewed related IRS documentation to determine if:
 - (a) The taxpayer was sent the RRA 98 lien notice.
 - (b) All applicable business partners, powers of attorney, and spouses were sent the RRA 98 lien notice.
 - (c) The RRA 98 lien notice was mailed timely.
 - (d) Returned mail procedures were followed.
 - (e) The RRA 98 lien notice was mailed using certified mail, i.e., the mail must be accepted in person at a residence or at the post office.
- E. Contacted key IRS officials in the offices selected for review and obtained information on any taxpayer complaints (those received by telephone, those formally being reviewed, those received on taxpayer feedback questionnaires, etc.) that relate to liens. Reviewed any cases and determined if any of the complaint conditions existed in the lien cases reviewed.
- II. Evaluated the IRS' compliance with informing taxpayers of their right to a hearing when a FTL is filed and granting hearings to eligible taxpayers.

The Internal Revenue Service Should Improve Its Federal Tax Lien Procedures

- A. Identified, through discussions with Appeals function employees, the procedures (regulations, user manuals, National Office memoranda, etc.) developed by the IRS to provide taxpayers with their right to a hearing when a FTL is filed.
 - 1. Determined if the procedures had been adequately changed to inform taxpayers of their right to a hearing (26 U.S.C. § 6320 (1986)).
 - 2. Determined if 26 U.S.C. § 6320 (1986) procedural changes had been properly communicated to all Appeals functions.
- B. Determined if controls were in place to ensure that eligible taxpayers were granted hearings in accordance with 26 U.S.C. § 6320(a)(3)(B) and (C) (1986). (NOTE: This step was not completed. Please see impairment statement on page 2 of the report.)
- C. Analyzed the processing of requests for hearings. (NOTE: This step was not completed. Please see impairment statement on page 2 of the report.)
 - 1. Determined all taxpayers who requested a hearing from January 19 to March 31, 1999, concerning the appropriateness of a FTL filing.
 - 2. Obtained related case files and reviewed the cases to determine if all hearing procedures outlined in 26 U.S.C. § 6320 (1986) were followed.
- D. Contacted key IRS officials in the offices selected for review and obtained information on any taxpayer complaints (those received by telephone, those formally being reviewed, those received on taxpayer feedback questionnaires, etc.) that related to a taxpayer's right to a hearing when a FTL is filed. Reviewed any cases and determined if any of the complaint conditions existed in the cases reviewed.

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Appendix III

Report Distribution List

Deputy Commissioner Operations C:DO
Office of the National Director of Appeals C:AP
National Taxpayer Advocate C:TA
Chief Operations Officer OP
Assistant Commissioner (Collection) OP:CO
Assistant Commissioner (Customer Service) OP:C
Assistant Commissioner (Program Evaluation and Risk Analysis) M:OP
Director, Customer Service OP:C:CS
Executive Officer for Service Center Operations OP:SC
National Director for Legislative Affairs CL:LA
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Regional Commissioner, Mid-States Region
Regional Commissioner, Northeast Region
Regional Commissioner, Southeast Region
Regional Commissioner, Western Region
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Director, Central California District
Director, Georgia District
Director, Houston District
Director, Kentucky-Tennessee District
Director, Midwest District
Director, Pacific-Northwest District
Director, Pennsylvania District
Director, Philadelphia Service Center
Director, South Texas District
Director, Southern California District
Director, Upstate New York District
Audit Liaisons
 Assistant Commissioner (Collection) OP:CO
 Assistant Commissioner (Customer Service) OP:C
 Executive Officer for Service Center Operations OP:SC

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to the Congress.

Finding and recommendation:

The IRS did not always consistently implement legal provisions and its own procedures for notifying taxpayers that a federal tax lien (FTL) was filed.

The IRS is not always informing taxpayers and their representatives of the taxpayers' right to a hearing once a federal tax lien (FTL) is filed, as required by 26 U.S.C. § 6320 (1986). We reviewed 473 cases, of which 157 cases (33 percent) involved 176 potential violations of taxpayer rights. The potential violations identified were as follows:

- For 78 potential violations, taxpayer representatives (e.g., accountant, attorney, etc.) were not sent a Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1986) [RRA 98] lien notice (page 7).
- For 62 potential violations, RRA 98 lien notices were not mailed to taxpayers within 5 business days of the FTL filing (page 8).
- For 5 potential violations, taxpayers were not given a full 30 calendar days to request a hearing, or the IRS did not mail the RRA 98 lien notice to another available address when the RRA 98 lien notice was returned to the IRS because it could not be delivered to the taxpayer (page 10).
- For 23 potential violations, sufficient documentation was not retained to prove that RRA 98 lien notices were sent to taxpayers or were sent timely (page 12).
- For 8 potential violations, responsible spouses or individual partners in a partnership were not sent a copy of the RRA 98 lien notice (page 14).

Also, existing IRS management information systems do not measure compliance with the new RRA 98 FTL notification requirements to ensure that these situations were identified and corrected (page 14).

This report includes two recommendations. First, IRS systems should be changed to automate the reissuance of undeliverable RRA 98 lien notices and the sending of RRA 98 lien notices to all responsible taxpayers. Second, procedures should be revised to ensure that the government's interest is protected, returned mail is completely researched and processed efficiently, adequate documentation is kept, and existing IRS management

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information systems measure compliance with the new RRA 98 FTL notification requirements.

Type of Outcome Measure: - **Taxpayer Rights and Entitlements**

This is a potential outcome measure.

Value of the Benefit:

We determined that, for 157 taxpayers, the IRS potentially violated taxpayers' rights provided under 26 U.S.C. § 6320 (1986). The sampling of cases was not statistically valid; therefore, the results may or may not be representative of cases nationwide. The corrective actions for our recommendations could possibly protect taxpayer rights, ensure funds are put to better use, and ensure that revenue is protected.

Methodology Used to Measure the Reported Benefit:

We obtained electronic data from the IRS' Automated Liens System for all FTLs filed from January 19 through February 28, 1999. We reviewed 473 FTL cases from 8 IRS offices (judgmentally selected 2 offices per region) to determine how well the IRS was implementing the new RRA 98 FTL notification requirements and the associated IRS procedures. We used a random number generator to select the cases and replaced or discarded cases where the FTL was cancelled or the filing was for a FTL that had been previously filed.

**Full Text of the Internal Revenue Service Restructuring and Reform Act,
Pub. L. No. 105-206, 112 Stat. 685 (1998) Federal Tax Lien Provisions**

**26 U.S.C. § 7803 (1986). COMMISSIONER OF INTERNAL REVENUE;
OTHER OFFICIALS.**

*(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX
ADMINISTRATION. —*

*(1) ANNUAL REPORTING.—The Treasury Inspector General for Tax
Administration shall include in one of the semiannual reports under section 5 of
the Inspector General Act of 1978—*

(A) an evaluation of the compliance of the Internal Revenue Service with—

*... (iii) required procedures under section 6320 upon the filing of a notice of a
lien.*

**26 U.S.C. § 6320 (1986). NOTICE AND OPPORTUNITY FOR
HEARING UPON FILING OF NOTICE OF LIEN.**

(a) REQUIREMENT OF NOTICE.—

*(1) IN GENERAL.—The Secretary shall notify in writing the person described in
section 6321 of the filing of a notice of lien under section 6323.*

*(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1)
shall be—*

(A) given in person,

(B) left at the dwelling or usual place of business of such person, or

*(C) sent by certified or registered mail to such person's last known address, not
more than 5 business days after the day of the filing of the notice of lien.*

*(3) INFORMATION INCLUDED WITH NOTICE.— The notice required under
paragraph (1) shall include in simple and nontechnical terms—*

(A) the amount of unpaid tax,

*(B) the right of the person to request a hearing during the 30-day period
beginning on the day after the 5-day period described in paragraph (2),*

*(C) the administrative appeals available to the taxpayer with respect to such lien
and the procedures relating to such appeals, and*

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(D) the provisions of this title and procedures relating to the release of liens on property.

(b) RIGHT TO FAIR HEARING.—

(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

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Appendix VI

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF TREASURY
INSPECTOR GENERAL
RECEIVED

September 15, 1999

SEP 15 10 10

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR TAX ADMINISTRATION

FROM: Charles O. Rossotti
Commissioner of Internal Revenue

SUBJECT: Draft Internal Audit Report - The Internal Revenue Service
Should Improve the Federal Tax Lien Procedures --
Urmem 8/25/99

Thank you for giving us the opportunity to review and comment on your draft report and recommendations based on the implementation of the Federal Tax Lien provisions of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98).

The overall objective of the review was to evaluate our compliance with new federal tax lien laws. To achieve that objective, samples were taken between January 19 and February 28, the first 6 weeks of implementation. In order to present a balanced and complete assessment of the situation, we suggest that the report emphasize that cases were selected during the initial implementation period. We recognize that any error is serious, and we intend to take whatever steps are necessary to ensure that procedures are followed. We believe that the most common cause of errors was lack of familiarity with procedural changes that were issued, rather than any intent to deny taxpayers their appeal rights.

Your report reflects the fact that we were very successful in the following areas: a) maintaining sufficient documentation to verify timely mailing of RRA 98 lien notices, and b) ensuring that spouses or individual partners in a partnership who are named in a filed Federal tax return, received a copy of the RRA 98 lien notice. Thank you for noting that we achieved between 95 percent - 98 percent accuracy in these areas. We strive for 100 percent accuracy and will continue to attempt to perfect these areas.

We agree with your recommendation that notification of the taxpayer representative should be automated. The largest number of potential procedural violations, 78, occurred as a result of the taxpayer representative not receiving a RRA 98 lien notice. We issued a memorandum in December 1998, which provided procedures in this area. Subsequently, Internal Revenue Manual (IRM) 5.12.3.1.4.1(3) was issued. It appears that procedures were not followed during this initial implementation period. Further, we found that the Customer Service function did not initially provide procedures for

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employees in the Automated Collection System (ACS). Since the time of the review, Customer Service has issued a memorandum providing procedures to ACS employees. ACS procedures will be incorporated into their IRM in the next revision. This process has a heavy dependence on clerical work.

There seems to be confusion and misunderstanding surrounding the complex provisions of the RRA 98 lien notice requirements and the timeframes involved. We understand the importance of providing sufficient time for taxpayers to reply to the notice and have full appeal rights. In fact, that is the reason the Automated Lien System (ALS) was programmed to add an additional 5 business days to the taxpayer response time after the mailing of the Notice of Federal Tax Lien. Therefore, instead of 30 days, the ALS system generates a RRA 98 lien notice that allows 35 days to compensate for any delay between printing and mailing. This ensures that the taxpayer will enjoy the full measure of time, provided by law, to request a hearing. We would like to meet with your staff, as soon as possible, to discuss this issue and reach agreement on this important provision of RRA 98.

We understand the importance of maintaining legible mail verification. Your report noted that "in 15 cases, the IRS had a copy of the Postal Form 3877 used to verify that mail was received by the post office; however, the copy did not include marking to verify that the post office had received the mail or the markings were illegible." This indicates that 97 percent of the forms were legible, and we will continue to strive towards receiving all forms 3877 in a legible format. Since the 15 cases were distributed among three of the eight locations it appears to be a situation where the IRS must continue to work closely with the United States Postal Service to rectify.

Your report noted 39 cases where mail was returned undelivered. IRM 5.12.3.1.4.1(6) addresses undelivered mail and specifically instructs employees to send the notice to the new address, recalculate the hearing date, and mail the new notice. We have made significant enhancements to our automated system to limit the manual process as much as possible.

Finally, we appreciate the opportunity to clear up any potential confusion regarding instructions on retention of Form 12153. The report notes that envelopes for Form 12153 should be retained if they are received after the 30-day period for requesting a hearing has lapsed. We would like to restate the location of these instructions. These procedures were not included in the 5.12, Federal Tax Lien Handbook because they are located in a different part of the IRM. These procedures are found in IRM 5.1.9, Taxpayer Appeal Rights. A memorandum was issued May 10, 1999, providing instructions regarding the retention of envelopes for Form 12153 and providing them to

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Appeals. The placement of the instructions is in keeping with the intent of the revision of the entire IRM to ensure that information and instructions were not duplicated in different places in the manual. We hope that this information is useful in clarifying this section of the report.

Thank you for the benefit of your input. We look forward to working with you in the future to improve these procedures.

Our comments on the specific recommendations in this report are as follows:

IDENTITY OF RECOMMENDATION #1

Change the IRS systems to automatically:

- (a) Reissue the RRA 98 lien notices to the taxpayer when the original notice cannot be delivered to the taxpayer's last known address. The notice should contain a different taxpayer address and a recalculated time period for requesting a hearing.
- (b) Send the RRA 98 lien notice to all responsible spouses and all appropriate business partners named in the filed Federal tax return.

ASSESSMENT OF CAUSE:

- (a) The re-issuance of RRA 98 notices and the recalculation of the taxpayer's time period for requesting a hearing are not automated processes.
- (b) Notices are not being sent to all responsible spouses and all appropriate business partners named in the filed Federal tax return. Integrated Data Retrieval System (IDRS) does not contain multiple addresses or the name and address of all partners.

CORRECTIVE ACTIONS:

- (a) ALS will be programmed to reissue notices and recalculate the time period for requesting a hearing. However, this process will require manual input of undelivered mail and new address information where available. ALS will then recalculate the taxpayer's time period for requesting a hearing.
- (b) A memorandum will be issued to appropriate field and customer service employees to ensure that either the "&" or "and" is used in spousal situations. A new procedure will be added requiring employees to provide multiple address information, if appropriate. We will also include a reminder that partnership information is not available to ALS and should be sent to the ALS Unit for manual input and automated preparation of RRA 98 lien notices.

IMPLEMENTATION DATES:

PROPOSED: January 1, 2000

PROPOSED: December 1, 1999

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RESPONSIBLE OFFICIAL:
Assistant Commissioner (Collection)

CORRECTIVE ACTION(S) MONITORING PLAN:

- (a) Collection management will review notices generated using the Notadd feature of the ALS database to ensure that new notices are being sent and response dates are recalculated.
- (b) Notices will be randomly selected from the ALS database by ALS programmers, forwarded to districts and reviewed quarterly.
- (c) Program reviews will be used to ensure that RRA 98 lien notices returned undelivered are being addressed and corrective action taken, where appropriate.

IDENTITY OF RECOMMENDATION #2:
Revise procedures to ensure that:

- a. The RRA 98 lien notice is sent to a taxpayer's representative.
- b. Returned RRA 98 lien notices are electronically documented on the lien system instead of being forwarded to employees who do not maintain paper case files.
- c. Envelopes for requests for hearings (Form 12153) are retained if they are received after the 30 calendar day period for requesting a hearing has lapsed.
- d. The Notice of Federal Tax Lien (NFTL), Form 668Y, is printed shortly after being input to the IRS' lien system and mailed the same day.
- e. Case files are researched for a different address when a RRA 98 lien notice is returned to the IRS, because it could not be delivered to the taxpayer.
- f. Existing management information systems measure compliance with the new RRA 98 NFTL notification requirements.

ASSESSMENT OF CAUSE(S):

- a. Employees are required to manually process RRA 98 lien notices for taxpayer representatives because CAF data is not accurate. The ACS IRM did not contain instructions for issuing RRA 98 lien notices to taxpayer representatives.
- b. RRA 98 lien notices returned undeliverable are not documented on the ALS system.
- c. Envelopes for Form 12153 are not being retained if the request for a hearing is received after the 30-day period for requesting a hearing has lapsed.
- d. There are no IRM provisions designating a time period for printing and mailing the NFTL.
- e. IRM procedures do not instruct field employees to research case files for a different address when RRA 98 lien notices are returned.
- f. There is no method available to measure compliance with the new RRA NFTL notification requirement.

CORRECTIVE ACTIONS:

2a1. Current procedures address the issuance of the RRA 98 lien notices to taxpayers' representatives. However, a future enhancement to the ALS will allow users to generate a taxpayer representative contact letter and will associate a copy of the

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original RRA 98 lien notice and attachments sent to the taxpayer after the manual input of certain information.

2a2. Customer Service issued Taxpayer Service Electronic Bulletin Board (TEBB) #99280, dated August 23, 1999, titled Post Lien Filing Notice. It added instructions to IRM 21.9.4, Enforcement Actions, and IRM 21.9.6, ACS Support, to implement the actions agreed to by Collection. The TEBB instructions have also been added to the IRM 21 revision being issued January 1, 2000.

2b. Enhance the ALS system to retain manually input information related to the return of RRA 98 lien notices for ACS employees.

2c. Add procedures to the Lien Handbook requiring employees to forward the Form 12153 and envelopes to Appeals for hearings requested after the 30-day period has elapsed. Issue interim procedures by November 30, 1999.

2d. Add IRM procedures to the Lien Handbook to clarify that Form 668(Y)(C) be printed and mailed, at a minimum, weekly. Issue interim procedures by November 30, 1999.

2e. Add provision to IRM for field employees to research case files for new address information when RRA 98 lien notices are returned undelivered. Issue interim procedures by November 30, 1999.

2f. Conduct program reviews to measure compliance of RRA NFTL notification requirements.

IMPLEMENTATION DATE(S):

2a1. PROPOSED – January 1, 2000

2a2. COMPLETED – August 23, 1999

2b. PROPOSED – January 1, 2000

2c. COMPLETED – April 1, 1999

2d. COMPLETED – April 1, 1999

2e. COMPLETED – April 1, 1999

2f. Ongoing

RESPONSIBLE OFFICIAL(S):

2a1. Assistant Commissioner (Collection)

2a2. Assistant Commissioner (Customer Service)

2b, 2c, 2d, 2e, and 2f. Assistant Commissioner (Collection)

CORRECTIVE ACTION(S) PLAN MONITORING:

a. Conduct quarterly reviews of randomly selected RRA 98 lien notices from the ALS database.

b. Conduct case and/or program reviews to monitor all aspects of this recommendation.

If you have any questions or need additional information, please call me, or a member of your staff may contact Kyle Ballew at 622-4943.